

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

|  |   |                      |
|--|---|----------------------|
| In the Matter of                       | ) |                      |
|  | ) |                      |
| SBC IP Communications, Inc.            | ) | CC Docket No. 99-200 |
| Petition for Limited Waiver of         | ) |                      |
| Section 52.15(g)(2)(i) of the          | ) |                      |
| Commission's Rules Regarding Access to | ) |                      |
| Numbering Resources                    | ) |                      |

**COMMENTS OF THE NEW YORK STATE  
DEPARTMENT OF PUBLIC SERVICE**

The New York State Department of Public Service (NYDPS) submits these comments in response to the Commission's July 16, 2004 Public Notice issued in the above-entitled proceeding. The Commission seeks comment on SBC IP Communications, Inc.'s ("SBC-IP") July 7, 2004 Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's rules regarding access to numbering resources ("Petition"). The rule from which SBC-IP seeks limited waiver requires applicants seeking to obtain initial numbering resources from the North American Numbering Plan Administrator (NANPA) to provide "evidence (e.g., state commission order or state certificate to operate as a carrier) demonstrating that they are licensed and/or certified to provide service in the area in which they seek numbering resource."<sup>1</sup> SBC-IP states in its Petition that it is an "information service provider,"<sup>2</sup> and that compliance with the rule would require it to "subject itself to state common carrier regulation."<sup>3</sup> It therefore requests a waiver, on a temporary basis until the Commission adopts final numbering rules regarding IP-enabled services, of the rule in order to enable it to obtain numbering resources directly from

---

<sup>1</sup> Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, 15 FCC Rcd 7574, 7615, ¶ 97 (rel. March 31, 2000).

<sup>2</sup> Petition at 6.

<sup>3</sup> Id.

NANPA without having to become state-certificated.<sup>4</sup> Additionally, SBC-IP states that it intends to demonstrate compliance with the Commission's facilities readiness requirements by meeting three particular criteria set forth in the Petition.<sup>5</sup>

The NYDPS does not concede SBC-IP's argument that it is an "information service provider" and, therefore, is not subject to state certification requirements. These issues, however, will be addressed in other pending proceedings<sup>6</sup> and need not delay consideration of whether SBC-IP should have direct access to numbering resources. The answer to the latter question should hinge upon demonstrated need for such access and commitment to accept regulatory obligations relevant to such access.<sup>7</sup> Subject to the caveats discussed, NYDPS does not oppose a grant of the limited waiver, pending future determination of SBC-IP's obligations with respect to state certification requirements.

The limited waiver, however, should not extend to a waiver of the existing state facilities readiness requirements, nor alter in any way the Commission's delegation of authority to states to define facilities readiness criteria. While SBC-IP states that it intends to meet the "facilities readiness" requirements of 47 CFR Part 52.15(g)(2)(ii),<sup>8</sup> it fails to take into account that the Commission has specifically delegated to state commissions, pursuant to Section 251(e)(1) of the

---

<sup>4</sup> Id. at 2, 6.

<sup>5</sup> Petition at 10.

<sup>6</sup> E.g., IP-Enabled Services, WC Docket No. 04-36; Vonage Holdings Corp. v. The New York State Pub. Serv. Comm'n, Case No. 04 Civ. 4306 (S.D.N.Y. filed June 7, 2004); Vonage Holdings Corp. v. Minnesota Pub. Util. Comm'n, Case No. 04-1434 (8<sup>th</sup> Cir. filed Feb. 20, 2004).

<sup>7</sup> The NYDPS is concerned that voice over Internet protocol (VoIP) providers such as SBC-IP are seeking the benefits ascribed to telecommunications carriers without taking on the corresponding obligations. This would seem unfair to carriers that comply with both state and federal telecommunications requirements.

<sup>8</sup> This regulatory provision requires that "the applicant [for initial numbering resources] is or will be capable of providing service within sixty (60) days of the numbering resources activation date." SBC-IP has not requested waiver of this provision.

Telecommunications Act of 1996,<sup>9</sup> the authority to define facilities readiness. Instead, SBC-IP states that it is willing and able to meet three specific criteria as a means of demonstrating facilities readiness.<sup>10</sup> The Petition appears to suggest that SBC-IP's short list of self-created criteria should be exhaustive.<sup>11</sup> These criteria alone are insufficient for determining whether a carrier is prepared to provide service prior to receiving initial numbering resources. As the Commission recognized, the states are in a better position to judge whether appropriate facilities are in place to ensure proper utilization of numbering resources.

In particular, the New York State Public Service Commission adopted state-level facilities readiness criteria in order to rectify the problems that occur when local calls made from customers of independent telephone companies to competitors' numbers either failed to reach their destinations or were billed as toll calls.<sup>12</sup> SBC-IP should not be permitted to substitute its own rules in place of established facilities readiness criteria to prevent such mishaps from occurring. Therefore, should the Commission grant the limited waiver requested by SBC-IP, the Commission should also clarify that it will not grant a waiver of its existing facilities readiness

---

<sup>9</sup> 47 U.S.C. § 251(e)(1). This provision states, in relevant part: "The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction."

<sup>10</sup> Petition at 10. These criteria are: "(1) ownership or control of one or more soft switches connected to the PSTN via tandem interconnection; (2) provision of connectivity to the PSTN using traditional TDM signaling and SS-7 functionality; and (3) provision of location routing number ("LRN") functionality for implementation of local number portability." *Id.*

<sup>11</sup> The Petition offers no legal authority for these criteria. Rather, it cites the comments of its corporate affiliate SBC Communications ("SBC") in the Commission's IP-Enabled Services proceeding, where SBC argued in favor of requiring IP-enabled service providers to meet these criteria when seeking numbering resources from NANPA. See IP-Enabled Services, WC Docket No. 04-36, Comments of SBC Communications at 87-88 (filed May 28, 2004).

<sup>12</sup> See Omnibus Proceeding to Investigate the Interconnection Agreements Between Telephone Companies, Case 00-C-0789, 2000 N.Y. PUC LEXIS 1047, at 1-5 (N. Y. Pub. Serv. Comm'n Dec. 22, 2000) (order). This problem occurred because no physical interconnection arrangements had been made between the CLECs and the independents. *Id.* at 2. The solution was to require CLECs to enter into interconnection agreements with all incumbents in the local calling area before obtaining numbers from NANPA. *Id.* at 5.

requirements, nor alter in any way its delegation of authority to states for defining facilities readiness criteria. In this way, SBC-IP will not need state certification in the interim but would be required to meet local readiness criteria as a condition for obtaining telephone numbers.

Moreover, since SBC-IP indicates that it intends to comply fully with all of the Commission's numbering resource requirements, including thousand-block number pooling, reporting, local number portability, and contribution to administration costs,<sup>13</sup> we do not oppose the waiver. Additionally, we note that SBC-IP requests waiver only on a temporary basis, pending the Commission's final numbering rules for IP-enabled services.<sup>14</sup> As SBC-IP agrees to accept critical regulatory obligations related to numbering resources, and because the waiver requested is temporary in nature, the NYDPS does not object to grant of the state certification requirement waiver to SBC-IP, subject to the foregoing exceptions.

Respectfully submitted,

Dawn Jablonski Ryman, General Counsel  
By: John C. Graham, Assistant Counsel  
Public Service Commission  
of the State of New York  
Three Empire State Plaza  
Albany, New York 12223-1350  
(518) 474-2510

August 16, 2004

---

<sup>13</sup>Petition at 10.

<sup>14</sup>Id. at 11.